

REMARKS

No Claims are amended. No new Claims are added. Thus, Applicants submit that no new matter has been added. Claims 22-50 are now in the application. Reconsideration of the application is respectfully requested in light of the foregoing amendments to the specification and the following remarks.

Minor amendments are made in the specification at pages 7 and 10 to correct grammatical errors. A minor amendment is made in the paragraph bridging pages 19-20, calling to mind the fact that vinylidene chloride copolymer is well known for its inherent properties as an oxygen barrier material in packaging films. No new matter is added.

Applicants respectfully point out that in the Office Action dated 06/03/2005 the Examiner examined only Claims 22-41 of the application, but not Claims 42-50 which were added to the application in Applicants' submission entitled AMENDMENT B, on 03/09/2005. Applicants assert that AMENDMENT B was in proper form, as evidenced by its entry into the file, and thus Claims 42-50 should have been considered and examined.

Double Patenting Rejection (Nonstatutory)

Claims 22-41 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-26 of US Patent No. 6,709,687.

Applicant encloses herewith a Terminal Disclaimer with respect to US Patent 6,709,687. Accordingly, the obviousness-type double patenting rejection is overcome. Withdrawal of the rejection is respectfully requested.

Rejection of Claims under 35 USC §101

According to the Office Action dated 06/03/2005 (Page 6, § 20), Claims 21-41 stand rejected under 35 USC §101 as directed to non-statutory subject matter, for reciting printed matter. Since Claim 21 was previously canceled, Applicants assume that the Examiner intended to reject Claims 22-41, and respond accordingly. Applicants respectfully traverse the rejection.

Applicants assert that the rejection was improper since Claims 22-41 are allowable without considering the various iterations of recited printed indicia, in respective ones of Claims 22-41. As one example, referring to Claim 22, none of the references of record, separate or combined, teach or suggest:

--a multiple-layer anti-transfer film which “upon contact with a food product...wherein such food product has a tendency to deposit...a visually obscuring food product component thereof, other than water condensation ...being effective to attenuate the visually obscuring affect of the visually obscuring component.”

As another example, referring to Claim 36, none of the references of record, separate or combined, teach or suggest a film having a first polymeric layer which is effective to attenuate the visually obscuring affect of a visually obscuring food product component, upon contact with a food product by physical contact with the film, where the visually obscuring food product component is other than water condensation.

Although Applicants do not admit that the rejection under 35 USC §101 was proper, and expressly assert that it was not, Applicants will address the rejection under 35 USC §101 as though it was proper, for the sake of completeness of argument.

The Examiner asserts that “as a matter of law, printed matter is not patentable” (Office Action dated 06/03/2005, page 6, ¶ 21). Applicants agree with the Examiner’s

assertion, but only with respect to “printed matter alone.” In stark contrast, Applicants wish to make of record that, also as a matter of law, there are equally notable instances when the Examiner’s assertion does not apply to printed matter. Namely, printed matter carries patentable weight when a functional relationship exists between the printed matter and the structural elements of the invention.

In fact, the first case that the Examiner relies on to support his assertion, *In re Miller*, 418 F.2d 1392 (CCPA 1969) is an example of a case in which printed matter indeed carried patentable weight.

The *In re Miller* case addressed an invention which included printed matter on measuring utensils. The printed matter simplified the task of evaluating fractional relationships during food preparation processes. The Court of Customs and Patent Appeals reversed the Patent Office rejection because the printed matter was functionally related to the structure of the invention.

Likewise, the printed indicia recited in, for example, Claims 22, 30, 31, 36, and others, is functionally related to the structural elements recited in the respective Claims. As disclosed in the specification, anti-transfer films of the invention function to enable a user to evaluate, visually by looking through such anti-transfer film, the contents that the anti-transfer film covers, e.g. food products which have a water activity less than 0.95 which are covered by and/or contained within such anti-transfer films.

When using prior art films in lieu of Applicants’ invention, it is relatively more difficult to visually evaluate food products which have water activities less than 0.95, as compared to using Applicants’ anti-transfer film. Visual evaluation, of food products having water activities less than 0.95, through prior art films, is more difficult because such food products deposit various non-water, visually obscuring, food product components there-against which correspondingly compromises the integrity of the clarity of such prior art films.

A function of Applicants’ invention is to provide a means of simplifying a user’s task of evaluating packaged food products which have water activities less than 0.95. The

printed indicia which is recited in for example, Claims 22, 30, 31, 36, and others, is an integral part of providing a means of simplifying a user's task of evaluating packaged food products which have water activities less than 0.95.

The printed indicia of Claims 22, 30, 31, 36, and others, conveys information and/or data which is beneficial to a user in the user's evaluation of the packaged food products. Such information includes various contents information, nutritional or otherwise, information such as bar codes (which might be usable or readable by devices such as scanning devices) and/or other information.

In other words, the printed indicia of Claims 22, 30, 31, 36, and others, simplifies a user's task of evaluating packaged food products which have water activities less than 0.95 (as do the structural components of the invention). Thus, the printed indicia of Applicants' Claims 22, 30, 31, 36, and others, is completely analogous to the printed matter of *In re Miller* which simplified the task of evaluating fractional relationships during food preparation processes. Again, *In re Miller* was a case in which printed matter carried patentable weight.

Since an intimate functional relationship exists between (i) the printed indicia of Claims 22, 30, 31, 36, and others, and (ii) the structural limitations of the respective Claims, Applicants' respectfully request that the rejection under 35 USC §101 be withdrawn and that Claims 22-50 be allowed.

Rejection of Claims under 35 USC §103(a)

Claims 22-41 stand rejected under 35 USC §103(a) as unpatentable over Curlam® Grade 1830-G (hereinafter "Curlam") in view of Kneale (US Pat. No. 6,046,254).

Claims 22-41 stand rejected under 35 USC §103(a) as unpatentable over Fischer et al. (US Pat. No. 5,523,136, hereinafter "Fischer") in view of Kuo et al. (US Pat. No. 5,962,092, hereinafter "Kuo").

Claim 23 stands rejected under 35 USC §103(a) as unpatentable over Fischer in view of Kuo, and further in view of Kneale.

Applicants respectfully traverse all rejections.

Since the various rejections under 35 USC §103(a) for the most part globally reject Claims 22-41, and are analogs of each other, the rejections to Claims 22-41 as unpatentable over Curlam in view of Kneale, to Claims 22-41 as unpatentable over Fischer in view of Kuo, and to Claim 23 as unpatentable over Fischer in view of Kuo, and further in view of Kneale, will largely be addressed in a single discussion.

Referring now to the rejections of Claim 22, over Curlam in view of Kneale and over Fischer in view of Kuo, none of the references of record, separate or combined, teach or suggest:

--a multiple-layer anti-transfer film which “upon contact with a food product...wherein such food product has a tendency to deposit...a visually obscuring food product component thereof, other than water condensation ...being effective to attenuate the visually obscuring affect of the visually obscuring component--

To the contrary, all of the references relied upon expressly teach away from using their respective films in such an application. In other words, all of the references relied upon teach films used with food products which potentially “fog” their packages. As taught by Kneale “when saturating water evaporates from moist food, it may saturate the air spaces between the film and the food and begin condensing on the inner surface of the film as minute droplets of water” (Kneale, Column 1, Lines 25-31). The collection of such minute droplets of water yields a fogging effect, which the references relied upon seek to remedy by way of e.g. anti-fogging agents.

Thus, the references relied on teach solving problems related to evaporating water and water condensation, in stark contrast to Applicants' Claim 22. Many of the "other than water condensation" visually obscuring food product components of Claim 22 have properties which are vastly different from the properties of water droplets.

As one example, non-water visually obscuring food product components include various hydrophobic structures such as lipids, with properties vastly different from those of water droplets. The references simply provide no motivation, express or implied, to apply solutions to "water droplet" problems to "non-water droplet" problems. The premise of doing so is counterintuitive.

To illustrate that Applicants solved a non-water droplet, i.e. non-fogging, problem, Applicants refer to the discussion in their specification in connection with examples 1 and 2, beginning at page 21, and illustrated in FIGURE 11. The visually obscuring affect only occurred when the product physically touched the packaging film.

FIGURE 11 illustrates use of films, designated "MEVA", which included anti-transfer material, and films which did not include anti-transfer material, designated "EVA". Note that in FIGURE 11, no condensation occurred on any of the films when the containers were in upright orientations, and that the film designated "EVA" (no anti-transfer material) was visually degraded only when the container was inverted such that the product contacted the film. The film containing the anti-transfer material was, of course, not degraded even when contacted by the product.

The visual degradation of the film occurred not as a result of water condensation, but rather as a result of physical contact with the food product, and the transfer of one or more food product components from the food product to the film as a result of such physical contact.

Thus, the mechanism for deposition of visually impairing material onto the film, which the present invention remedies, is not a condensation process. Rather, the visual impairment is due to physical contact between the food product and the packaging material, and corresponding transfer of one or more food product components from the

food product to the packaging film.

Again, none of the references of record, separate or combined, teach or suggest using films in a use environment where water droplet condensation problems are nonexistent and non-water (sometimes even hydrophobic) substances, contact deposition (non-condensation), is an issue. Such a user environment is generally opposite the environments taught in the references of record, e.g. environments in which water droplet condensation is a major issue.

In addition, Claim 22 further recites “said multiple-layer anti-transfer film bearing printing indicating contents defining dried food product having water activity of no more than 0.95.” None of the references of record, separate or combined, teach or suggest printing such indicia onto a film. Actually, the references teach away from doing so, since they teach using films with food products having higher water activity values of at least 0.98.

Printing a film, containing anti-transfer additive, with indicia indicating use of the film with a dried food product having relatively lower water activity, such as that of Claim 22, would obviate conventional expectations about the utility of the film, where need for the anti-fog material would not have been conventionally recognized. According to convention, the objection to doing so is that such film is unnecessarily complex, contains an unnecessary ingredient, and is correspondingly more costly than necessary to perform the desired packaging function.

For the aforementioned reasons, Applicants assert that the rejections to Claim 22, namely the rejection in light of Curlam in view of Kneale and the rejection in light of Fischer in view of Kuo, are improper. Accordingly, Applicants respectfully request the withdrawal of the rejections to, and the allowance of, Claim 22.

Claims 23-35 are allowable as depending, directly or indirectly, from allowable Claim 22. In addition, each of Claims 23-35 is allowable based on its own merits.

As one example, Claim 23 further recites “wherein said anti-transfer material is selected from the group consisting of primary alcohols having molecular weight greater

than 200, polyethylene glycol, polypropylene glycol, glycerol, ethoxylated alcohols, glycerol monostearate, glycerol monooleate, esters of adipic acid, sorbitan monolaurate, sorbitan monooleate, ethoxylated sorbitan monolaurate, cocoamine, tallow amine, stearyl amine, ethoxylated stearyl amine, microcrystalline wax, carnauba wax, montan ester waxes, poly(dimethyl siloxane), and polyethylene having molecular weight less than 4000.” As another example, Claim 34 further recites “wherein said anti-transfer film has a thickness of about 3.5 mils to about 8 mils”, none of which is taught or suggested by the references of record, separate or combined.

Regarding specifically the rejection of Claim 23 in light of Fischer in view of Kuo, and further in view of Kneale, Applicants again assert that the rejection is improper as the focus on anti-fogging agents and anti-fogging properties can not reasonably extend to articles of manufacture which are used in situations in which fogging is not an issue.

Accordingly, Applicants respectfully request the withdrawal of the rejections to, and allowance of, Claims 23-35.

Referring now to the rejections of Claim 36, over Curlam in view of Kneale and over Fischer in view of Kuo, none of the references of record, separate or combined, teach or suggest a film having a first polymeric layer which is effective to attenuate the visually obscuring affect of a visually obscuring food product component, upon contact with a food product by physical contact with the film, where the visually obscuring food product component is other than water condensation.

The above discussion with respect to Claim 22 is applicable to Claim 36, as the same references are used and Applicants assert generally the same premise with respect to the impropriety of the rejections to Claim 36 as the impropriety of the rejections to Claim 22. As such, Applicants do not here repeat, with respect to Claim 36, the above arguments relating to Claim 22, yet assert that the arguments relating to Claim 22 are equally applicable here with respect to Claim 36. Namely, the Examiner’s proposed combination

and modification of the references is improper since there is no motivation, express or implied, to modify the references in such a manner.

To the contrary, all of the references relied upon expressly teach away from using their respective films in such an application. Again, all of the references relied upon teach films used with food products which potentially “fog” their packages. Namely, the references relied on teach solving problems related to evaporating water and water condensation, in stark contrast to Applicants’ Claim 36 which recites “other than water condensation.”

In other words, while the art well addresses solutions to water condensation, none of the references of record, separate or combined, teach or suggest any solution to a visually obscuring food product when the visually obscuring food product component is other than water condensation. Nor is there any incentive or motivation, express or implied, to apply solutions to water droplet condensation problems to non-water droplet, non-condensation, problems, since numerous non-water food products have properties which are drastically different than those of water.

Accordingly, Applicants respectfully request the withdrawal of the rejections to, and allowance of, Claim 36.

Claims 36-41 are allowable as depending, directly or indirectly, from allowable Claim 36. In addition, each of Claims 36-41 is allowable based on its own merits.

As one example, Claim 40 further recites “wherein said anti-transfer material is effective to attenuate a visually obscuring affect of at least one of fat and sugar at water activity of about 0.5 to about 0.8”; and Claim 41 further recites “wherein said film has a thickness from about 1.5 to 8 mils thick”, none of which is taught or suggested by the references of record, separate or combined.

Accordingly, Applicants respectfully request the withdrawal of the rejections to, and allowance of, Claims 36-41.

Regarding Claims 42-50, Applicants submit that these claims are in proper, allowable form. Specifically regarding independent Claim 42, none of the references of record, separate or combined, teach or suggest:

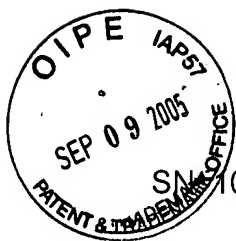
--a third layer bearing printing indicative of package comprising a dried, fat containing, food product having less than about 30 weight percent water content and selected from the group of jerky, dried beef, and a food product having a water activity less than 0.95;

wherein said first layer has on its surface distal from said second layer an anti-transfer material selected from the group consisting of a surfactant, a wax, a silicone and blends thereof--

As a general statement regarding the references of record, it is counterintuitive to a person of ordinary skill in the art to use an anti-fog film to package low moisture foodstuffs. Anti-fog films are well known for use in packaging produce such as lettuce and fresh red and processed meats. In these typical uses for anti-fog film, the problem being addressed in the references of record is the problem of condensation of droplets of water out of the gaseous environment inside the package and onto the solid inner surface of the packaging film.

In the present invention, the foodstuffs being packaged do not produce such water droplet-forming gaseous environment. Therefore it would not have been obvious to incur an added expense to add anti-fog material to such film, as an anti-transfer agent, which was to be used in packaging where water droplets or condensation problems do not exist.

In addition, as previously mentioned, none of the references of record, separate or combined, teach or suggest an anti-transfer film, wherein said first layer has on its surface distal from said second layer an anti-transfer material selected from the group consisting of a surfactant, a wax, a silicone and blends thereof.



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Accordingly, Applicants respectfully request the allowance of Claim 42.

Each of Claims 43-50 is allowable as depending from allowable Claim 42 and on its own merits. As one example, Claim 45 further recites "wherein said anti-transfer material comprises a silicone or blends thereof"; as another example Claim 49 further recites "wherein said anti-transfer material is incorporated within said second layer", none of which is taught be the references of record, separate or combined.

Accordingly, Applicants respectfully request the allowance of Claims 43-50.


Since Claims 42-50 were not examined in the Office Action dated 06/03/2005, should the Examiner send another Office Action in lieu of a Notice of Allowance, Applicants respectfully request that such Office Action be made non-final. Applicants would greatly appreciate the Examiner's reasonableness and generosity in doing so.

A fee in the amount of \$130 is believed due for the Terminal Disclaimer. A check is enclosed in the amount of \$130 for the Terminal Disclaimer submitted herewith. Should any other fee be properly due, or if any fee submitted herewith is insufficient, or if any refund is due, kindly charge same, or credit any overpayment, to Deposit Account 23-2130.

Please feel free to contact me with any questions, comments or concerns, at the telephone number listed at the end of this document.

Respectfully submitted,
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September 06, 2005

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